



CITY OF SOMERVILLE, MASSACHUSETTS
EXECUTIVE DEPARTMENT

MICHAEL E. CAPUANO
MAYOR

June 28, 1990

The Honorable
Board of Aldermen
City of Somerville
Massachusetts 02143

Dear Ladies and Gentlemen:

I respectfully request the approval of your Honorable Board that the City of Somerville adopt the provisions of Massachusetts General Laws, Chapter 258, Section 13.

In pertinent part the statute states:

...shall indemnify and hold harmless municipal officers, elected or appointed from personal financial loss and expense including reasonable legal fees and costs ... in an amount not to exceed one million dollars, arising out of any claim, demand, suit or judgement by reason of any act or omission, except an intentional violation of civil rights of any person, if the official at the time... was acting within the scope of his official duties or employment.

The acceptance of this provision will provide a substantial measure of comfort and relief for public officials in this City.

Respectfully,


Michael E. Capuano
Mayor

MEC/pg



CITY OF SOMERVILLE, MASSACHUSETTS
LAW DEPARTMENT

ANTHONY P. SULLIVAN
CITY SOLICITOR

June 26, 1990

Honorable Michael E. Capuano
Mayor
City Hall
Somerville, Massachusetts

Dear Mayor Capuano:

I write to recommend that the City adopt the provisions of G.L. ch. 258, § 13. As we have discussed on a number of occasions, the surge of civil rights lawsuits against municipalities in recent years has been almost epidemic. The threat is real for municipal coffers but also for public officials who are often sued in their individual as well as public capacities. The prospect of a judgment against a public official and the possible loss of one's home to satisfy that judgment is daunting. The chilling effect prevents good people from seeking public office as well as intimidates current public officials from performing their duties.

To remedy this problem, the Legislature enacted § 13 of G.L. ch. 258 as a local option for municipalities. In pertinent part, the statute states that any city or town which accepts its provisions:

shall indemnify and hold harmless municipal officers, elected or appointed from personal financial loss and expense including reasonable legal fees and costs ... in an amount not to exceed one million dollars, arising out of any claim, demand, suit or judgment by reason of any act or omission, except an intentional violation of civil rights of any person, if the official at the time ... was acting within the scope of his official duties or employment.

The acceptance of this provision will, in my judgment, provide a substantial measure of comfort and relief for public officials in this City. Although the statutory term "municipal officers" is not



Honorable Michael E. Capuano
Mayor of the City of Somerville

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defined in either the statute or annotated case decisions, a fair reading of the statute as a whole and in context with § 9 of G.L. ch. 258 (relative to public employee indemnification) convinces me that a Court would apply the statute to members of the Board of Aldermen. It is somewhat unclear, however, whether other officials, i.e., department heads, are brought within this statute's protection. Nevertheless, the benefits inherent in freeing public officials' from worry about personal liability in the conduct of their public business clearly outweigh some lack of clarity about statutory coverage.

For the above reasons, I recommend that you seek from the Board of Aldermen its approval to adopt this essential statutory protection. I have attached a copy of the statute hereto.

Very truly yours,

Anthony P. Sullivan
City Solicitor

JWF:APS/smt

CERTAIN WRITS AND PROCEEDINGS

or bad faith claim, see M.P.S. vol. 40, Cella, § 1987.

12. Enforcement of claims

Claims against the commonwealth, except as otherwise expressly provided in this chapter or by any general or special provision of law, may be enforced in the superior court. Added by St.1979, c. 1, § 1.

Historical Note

St.1979, c. 1, § 1, an emergency act, was approved Jan. 5, 1979, and by § 3 made effective July 20, 1978.

Library References

States 184.2. C.J.S. States § 275 et seq.

Comments. Immunities, sovereign immunity, Massachusetts tort claims, indemnification of public employees, see M.P.S. vol. 37, Nolan, § 369.

Indemnification, employees and officials, see M.P.S. vol. 18B, Randall and Franklin, § 1656. Powers exercisable by cities and towns, see M.P.S. vol. 18, Randall and Franklin, § 33.

Notes of Decisions

Governmental immunity 1 Injunction 2

1. Governmental immunity

Action by electric utility company seeking to reach and apply funds held by the Commonwealth, which funds were owed to debtor nursing home, did not fall within waiver of immunity under this section, since the company's claim against nursing home did not derive from the legal consequences of the contractual

relationship between the nursing home and the Commonwealth, and thus, action could not be maintained. Massachusetts Elec. Co. v. Athol One, Inc. (1984) 462 N.E.2d 1370, 391 Mass. 685.

2. Injunction

Claim for injunctive relief against the Commonwealth cannot be sustained pursuant to waiver of immunity set forth in this section. Massachusetts Elec. Co. v. Athol One, Inc. (1984) 462 N.E.2d 1370, 391 Mass. 685.

§ 13. Indemnity of municipal officials

Any city or town which accepted section one hundred I of chapter forty-one on or before July twentieth, nineteen hundred and seventy-eight, and any other city which accepts this section according to its charter, and any town which accepts this section in the manner hereinafter provided in this section shall indemnify and save harmless municipal officers, elected or appointed from personal financial loss and expense including reasonable legal fees and costs, if any, in an amount not to exceed one million dollars, arising out of any claim, demand, suit or judgment by reason of any act or omission, except an intentional violation of civil rights of any person, if the official at the time of such act or omission was acting within the scope of his official duties or employment.

This act shall be submitted for acceptance to the voters of each town at an annual town meeting in the form of the following question which shall be

CLAIMS AGAINST THE COMMONWEALTH, ETC.

258 § 13
Note 2

placed on the official ballot to be used for the election of town officers at said meeting:—"Shall the town vote to accept the provisions of section thirteen of chapter two hundred and fifty-eight of the General Laws which provides that the town shall indemnify and save harmless municipal officers, elected or appointed, from personal financial loss and expense including reasonable legal fees and costs, if any, in an amount not to exceed one million dollars, arising out of any claim, demand, suit or judgment by reason of any act or omission except an intentional violation of civil rights of any person under any law, if the official at the time of such act or omission was acting within the scope of his official duties or employment?" If a majority of the votes in answer to said question is in the affirmative, said provisions shall thereupon take full effect, but not otherwise.

Added by St.1979, c. 396, § 1. Amended by St.1982, c. 176, § 1.

Historical Note

St.1979, c. 396, § 1, an emergency act, was approved July 20, 1979, and by § 2, as amended by St.1980, c. 261, § 43, made effective July 20, 1978.

St.1980, c. 261 was approved June 11, 1980. St.1982, c. 176, § 1, approved June 28, 1982, and by § 2 made effective as of July 20, 1978, inserted "or town" in the first paragraph.

Notes of Decisions

Payment 2 Purpose of law 1

1. Purpose of law

This section and § 9 of this chapter providing for indemnification of public employees are comprehensive treatment of subject of indemnification in area covered and are designed to preclude exercise of any inconsistent local power or function on same subject. Filippone v. Mayor of Newton (1983) 452 N.E.2d 239, 16 Mass.App. 417, reversed on other grounds 467 N.E.2d 182, 392 Mass. 622.

Section 9 of this chapter permitting public employers to indemnify public officials within scope of their official duties or employment from personal financial loss and expenses, including legal fees and costs arising out of in-

tentional torts or civil rights violations, and this section, are specific in their terms and were intended by legislature to confine, on grounds of public policy, indemnification of public employees by their employers to covered cases where there is loss or actual expense which is personal to employee, not occasioned in civil rights cases by grossly negligent, willful or malicious conduct and, in any event, subject to maximum indemnification of \$1 million. Id.

2. Payment

This section did not entitle holders of unsatisfied federal district court judgments against police officers in § 1983 action to payment from the town, which had accepted this section's provisions. Restivo v. Town of Swansea (1986) 495 N.E.2d 838, 398 Mass. 1002.

City of Somerville, Dec 13, 19 90

Roll Call Vote in Connection with enroll card (item 28)

City of Somerville to adopt the provisions of
Mass Ch 258 - Sec 13

BOARD OF ALDERMEN

	YES	NO	ABSENT
1 JOHN M. CONNOLLY	1		
2 GRACE A. ABRUZZIO	2		
3 HELEN CORRIGAN	3		
4 MICHAEL A. GENTILE	4		
5 MARYANN C. CAPPELLO	5		
6 JOSEPH R. MACALUSO	6		
7 VINCENT P. CIAMPA			1
8 THOMAS F. TAYLOR	7		
9 GATHLEEN O'DEA	8		
10 PATRICIA A. BERG	9		
11 ROBERT P. CALLAHAN	10		

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Mayor's Communication

Requesting approval for the City of Somerville
to adopt the provisions of MGL Ch. 258,
Sec. 13 as defined within.

In Board of Aldermen

DEC 13 1990

TFE adopted

Arthur B. Bunker

In Board of Aldermen

JUN 28 1990

Leg. matter

Arthur B. Bunker

In Board of Alderman

DEC 4 1990

In the within the Com-
mission on LEGISLATIVE MATTERS
officially recommends

SHOULD BE APPROVED

Daphne D.

Chairman

Accepted:

Stark

Copy to members

Approved 12-17-90 19

Copy to
Treasurer
+ CC

Sent 12-27-90